IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6309 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEHBUBKHAN SAMOSKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR MH BAREJIA for Petitioner

MR HN SOMPURA, AGP for Respondent Nos.1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/08/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 2-4-2000 passed by the Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, co-accused, who have preferred Special Civil Application Nos.5090 of 2000 and 4757 of 1999, have already been released by this Court. He has submitted that only one offence under the provisions of Secs.66(b), 65(a), (e) and 81 of the Prohibition Act has been registered against the petitioner which has been registered as Prohi.Case No.5087 of 2000 at Shahpur Police Station. He has further submitted that petitioner is not a habitual offender. He has relied upon a judgment delivered by a Division Bench of this Court in the case of Hafijuddin Fazluddin Kazi Vs. Commissioner of Police, Ahmedabad City and another, reported in 1992(2) GLR 1332 more particularly towards head note which reads as under:

"Gujarat Prevention of Anti-Social Acivities Act, 1985 (XVI of 1985) -- Sec.2(c) -- Dangerous person -- singular criminal case pending against the detenu -- He cannot be held to be habitual offender and consequently he cannot be said to be a `dangerous person'.

4. It appears that detenu has been branded as a bootlegger relying upon a single offence registered against him under the provisions of Prohibition Act. It is to be noted that co-accused have been set at liberty by this Court. In view of the aforesaid judgment relied upon the learned advocate for the petitioner, petitioner cannot be held to be a habitual offender relying only on a single offence registered against him. Even no affidavit has been filed by the State authority controverting the said facts. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

"Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the

> authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

5. In view of the above, continued detention of the petitioner is illegal and cannot be sustained.

6. The petition is allowed. The impugned order of detention dated 2-4-2000 passed against the detenu is hereby quashed. The detenu-Mehbubkhan Samoskhan Pathan is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)

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